

U.S. Serial No. 10/762,979
Reply to Office Action of July 28, 2005

REMARKS/ARGUMENTS

CLAIM OBJECTIONS

Claims 36 and 64 are objected to because of informalities.

Claim 36 has been amended to recite the 'blower instead of "the gas supplying means", which the examiner noted as lacking antecedent basis.

Claim 64 has been amended to depend on claim 60 and therefore provide antecedent basis for "the retrograde flow".

The examiner suggested "the tube" and "the exit" in claim 64 lacked antecedent basis, but these terms appear in claim 64's base claim 56.

The applicants thank the examiner for noting these informalities.

CLAIM REJECTIONS

Claims 36-45 and 56 are rejected under 35 USC 103(a) as being unpatentable over Rapoport et al in view of Goldstein. Applicants respectfully traverse this rejection.

Claim 36 requires a "processor adapted to adjust a level of rebreathing". Rapoport does not show this. First, Rapoport does not describe rebreathing at all. There is just no mention of rebreathing expired air. Second, there is no disclosed control or adjustment of level of rebreathing, nor a processor adapt to do such control or adjustment. Rather, Rapoport deals with varying pressure in CPAP to minimize the flow of air. Goldstein does nothing to supply the missing teaching. Accordingly, this rejection is inapplicable to claim 36, and the same argument applies to claims 37-45.

Claim 56 requires "adjusting the apparatus such that gas flow from the blower is controlled at variable flow rate and essentially constant pressure". Rapoport is completely different from this. Rapoport describes a system that "increases or decreases pressure to the patient" (col. 2, lines 56-58) to "minimize the flow of air" (col. 2, line 38). This is essentially the opposite teaching from claim 56, which requires constant pressure.

The examiner also indicates that the difference between claim 36 and Rapoport is a dental appliance to reduce mouth leaks. Even apart from the two differences noted above, claim 36 also requires a "nasal occlusion device", which neither Rapoport nor Goldstein

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shows. Further, neither reference, nor the Haydu reference cited against claim 57 as showing a nasal occlusion device, contemplates the importance of reducing mask leaks in treatment of breathing disorders. Hence, there is no motivation to combine the references to provide Rapoport with a dental appliance and nasal occlusion device. Rapoport describes the use of the nose mask in CPAP as "the standard of care" (col. 1, line 54). It would take more than the existence of dental appliances and nasal occlusion devices to suggest to one of average skill in the art to alter the standard of care. There must be some motivation to look at another reference to find a method of reducing mask leaks, and these references do not provide the motivation. Hence, for this additional reason, these claims are patentable.

Accordingly, claims 36 and 56, and the claims dependent on them (claims 37-45 and 57-63) are patentable.

Claims 57-63 are rejected under 35 USC 103(a) as being unpatentable over Rapoport et al in view of Goldstein, and further in view of Haydu. Applicants respectfully traverse this rejection. The argument against this rejection has been dealt with in the discussion of claim 36 above.

The applicants thank the examiner for the indication of allowable subject matter, but since the remaining claims appear to be patentable, the applicants seek a notice of allowance of all pending claims.

Applicants respectfully request allowance of the application.

Respectfully submitted and signed on

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